



U.S. Citizenship
and Immigration
Services

C

[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: OCT 07 2004

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a regional office of a Christian denomination. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as pastor for the Miskito congregation at King of Kings Moravian Church, Miami, Florida. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on May 1, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout the two years immediately prior to that date.

The beneficiary entered the United States on August 8, 1998, as an F-1 nonimmigrant student, who sought to study at the Moravian Theological Seminary in Bethlehem, Pennsylvania. The seminary awarded the beneficiary a "Certificate in Theological Studies" on May 13, 2000. [REDACTED] in a March 2001 affidavit, lists the beneficiary's past experience as a pastor and as a student. Bishop Wilson mentions the

beneficiary's 1998-2000 seminary studies, but he does not indicate that the beneficiary served as a pastor at any church after 1997. [REDACTED] executive director of the petitioner's Board of Evangelism and Home Missions, states that the beneficiary's "salary is set at \$21,247 annually for 20 hours a week," indicating that the position is part-time.

The director instructed the petitioner to "[s]ubmit a detailed description of the beneficiary's prior work experience . . . [during] the two years preceding the filing of this petition." In response [REDACTED] states:

Having entered the seminary in August of 1998, [the beneficiary] remained there until June of 2000 . . . and did not complete the training as there were still serious problems with English.

...

He then, with his family, came to Miami and enrolled for further training at the South Florida Center for Theological Studies to be completed by August of 2002. We learned that he was unable to finish in the projected time allotted and must continue until 2003 before he receives his Master's degree. . . .

As a part of his training it was agreed that he would volunteer his services at the King of Kings Moravian Church, a provisional congregation under the auspices of the Board of Evangelism and Home Missions. . . . A provisional congregation is one that has not been able to reach the full membership number required for congregational status. . . . The King of Kings Provisional Congregation pays the rent and utilities for the [beneficiary's family] and provides \$100.00 per week spending money. The [petitioner] has provided a credit card to the [beneficiary's family] so they may buy their groceries, clothing and other household items.

The director denied the petition, in part because, during the qualifying period, the beneficiary was primarily a student, who only worked part-time as a pastor "as a part of his training." The director added that the petitioner has characterized the beneficiary as a "volunteer." On appeal, counsel asserts that there is no statutory or regulatory support for the director's position that "the beneficiary must . . . demonstrate two years of immediate salaried employment in the position offered."

Matter of Hall, 18 I&N Dec. 203 (BIA 1982), indicates that religious work can count as "employment" even if the compensation took the form of room, board, stipends, etc., rather than a fixed hourly salary. In this instance, the petitioner clearly provided for the beneficiary, and therefore the beneficiary was not an uncompensated volunteer. More significant is the fact that the beneficiary's pastoral work was not his principal activity; rather, it was a part-time activity tied to his ongoing graduate studies. In a 1980 decision, the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). That fact pattern appears to mirror closely the pattern in this proceeding.

Given the above facts, we cannot find that the beneficiary has continuously worked as a pastor throughout the 1999-2001 qualifying period.

The next issue is whether the petitioner has made a qualifying job offer. As noted above, established case law indicates that part-time employment is not continuous engagement in a religious occupation or vocation. In denying the petition, the director asserted that the position offered cannot qualify as a religious occupation for

immigration purposes, because it is only a part-time job. On appeal, counsel does not address or rebut this finding.

Tying the above two issues together, the beneficiary's experience during the qualifying period must be in the same vocation or occupation in which the beneficiary seeks future employment. From the available evidence, it appears likely that the beneficiary's pastoral work is simply his assignment during his ongoing training. Certainly, his ongoing education is not a crucial prerequisite for employment as a pastor. The beneficiary has acted, on an off, as a pastor since 1986, six years before he was ordained as a deacon. The beneficiary's continuing graduate studies, therefore, appear to be geared toward future career advancement. We cannot conclude from the available evidence that the beneficiary seeks to enter the United States in order to continue working as a pastor; his pastoral work, instead, appears to be an intermediate stepping stone. At best, the petition appears to have been filed prematurely.

The final issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(III) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(III), requires that the alien seeking classification "seeks to enter the United States" for the purpose of carrying on a religious vocation or religious occupation. In this instance, the beneficiary entered the United States as an F-1 nonimmigrant student. Thus, the director concluded, the beneficiary did not enter the United States for the purpose of working as a pastor.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks to enter*," which describes the entry as a future act. We therefore withdraw this particular finding by the director.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.